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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,410	03/10/2004	Duane Langenwalter	THI006USU	4112

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EXAMINER

FERGUSON, MICHAEL P

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,410

Applicant(s)

LANGENWALTER, DUANE

Examiner

Michael P. Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05/13/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-16, drawn to a decorative fencing system, classified in class 256, subclass 22.
 - II. Claims 17 and 18, drawn to a method for assembling a decorative fencing system, classified in class 29, subclass 897.31.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as the post could be inserted through the post attachment means and into the stake sleeve prior to driving the stake into the ground.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with James G. Coplit on April 14, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-16. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 17 and 18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

5. Claim 10 is objected to because of the following informalities:

Claim 10 (line 1) recites "of claim 5". It should recite --of claim 1--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlson (US 803,741).

As to claim 1, Carlson discloses a decorative fencing system comprising:

a stake 5 adapted to be driven into the ground, the stake including a stake sleeve;

a post 1, the post being adapted to be slidably inserted within and retained by the stake sleeve; and

a structural component including a post attachment means 7 disposed on an edge thereof, the post attachment means being adapted to be slidably attached to and engaged by the post (Figures 1 and 2).

As to claim 2, Carlson discloses a system wherein the structural component is selected from the group consisting of base units, gate units and end units (Figure 1).

As to claim 10, Carlson discloses a system wherein the posts 1 and the structural components include decorative accents 3 (Figure 1).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson in view of Gibbs et al. (US 6,811,145).

As to claims 11 and 13, Carlson fails to disclose a system wherein the structural components and the posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish.

Gibbs et al. teach a fencing system wherein structural components and posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish; the steel material providing for a strong, durable fence element, and the powder coated finish providing for enhanced corrosion resistance (column 2 lines 22-34). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a system as disclosed by Carlson to have components manufactured from powder coated tubular

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steel as taught by Gibbs et al. in order to provide for a strong, durable fence element having enhanced corrosion resistance.

As to claim 12, Carlson discloses a system wherein the structural components are welded in assembly.

As to claim 14, Carlson discloses a system wherein the structural components, posts **1** and stakes **5** are removably attached to each other by frictional contact therebetween (Figure 2).

As to claim 15, Carlson discloses a system wherein a stake **5** is wedge-shaped, and a stake sleeve comprises a cylindrical cavity therein (Figure 2).

10. Claims 1-10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravert (US 1,426,215) in view of Carlson.

As to claim 1, Ravert discloses a decorative fencing system comprising:
a footing **12** adapted to be fastened to the ground;
a post **B**, the post being adapted to be retained by the footing; and
a structural component including a post attachment means **6,7** disposed on an edge thereof, the post attachment means being adapted to be slidably attached to and engaged by the post (Figures 1 and 4).

Ravert discloses a system comprising a footing adapted to be fastened to the ground, and a post being adapted to be retained by the footing instead of a stake including a stake sleeve; and a post being adapted to be slidably inserted within and retained by the stake sleeve.

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Carlson teaches a fencing a system a footing **6** adapted to be fastened to the ground, and a post **1** being adapted to be retained by the footing, or a stake **5** including a stake sleeve; and the post being adapted to be slidably inserted within and retained by the stake sleeve (Figures 2 and 3, page 1 lines 49-54). Inasmuch as the references disclose footing and stakes as art recognized equivalents, it would have been obvious to one of ordinary skill in the exercise art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).

As to claim 2, Ravert discloses a system wherein the structural component is selected from the group consisting of base units, gate units and end units (Figure 1).

As to claim 3, Ravert discloses a system wherein the base units **A** include a vertical element **8** on either side thereof, and wherein the post attachment means **6,7** are disposed on the vertical elements (Figure 3).

As to claim 4, Ravert discloses a system wherein the post attachment means **6,7** comprise a pair of post rings disposed at the top and bottom of both of the vertical elements **8** (Figure 3).

As to claim 5, Carlson discloses a system wherein the gate units comprise a pair of complementary doors **D** each having an outside edge, wherein the outside edges terminate in a vertical element **15** and wherein the post attachment means **6,7** are disposed on the vertical elements (Figures 2 and 4).

As to claim 6, Carlson discloses a system wherein the post attachment means **6,7** comprise a pair of post hinges disposed at the top and bottom of the vertical

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elements **15**, the post hinges including a post ring and a hinge element to allow the complementary doors **D** to open and close (Figures 2 and 4).

As to claim 7, Ravert discloses a system wherein the end units **A** include a vertical element **8** on one side thereof and wherein the post attachment means **6,7** are disposed on the vertical elements (Figure 3).

As to claim 8, Ravert discloses a system wherein the post attachment means **6,7** comprise a pair of post rings disposed on the top and bottom the vertical element **8** (Figure 3).

As to claim 9, Ravert discloses a system wherein the end unit **A** includes a stake pin **14** disposed on the side opposite the vertical element, the stake pin being adapted to being inserted into the ground so as to anchor the end unit in position (Figure 4).

As to claim 10, Ravert discloses a system wherein the posts **B** and the structural components include decorative accents (Figure 4).

As to claims 16, Ravert discloses a decorative fencing system comprising:

a footing **12** adapted to be fastened to the ground;

a post **B**, the post being adapted to be retained by the footing; and

a structural component including a post attachment means **6,7** disposed on an edge thereof, the post attachment means being adapted to be slidably attached to and engaged by the post, the structural component being chosen from the group consisting of base units, gate units and end units, wherein:

the base units **A** include a vertical element **8** on either side thereof, and wherein the post attachment means comprises pair of post rings disposed at the top and bottom of both of the vertical elements;

the gate units **D** comprise a pair of complementary doors each having an outside edge, wherein the outside edges terminate in a vertical element and wherein the post attachment means **6,7** comprise a pair of post hinges disposed at the top and bottom of the vertical elements, the post hinges including a post ring and a hinge element to allow the complementary doors to open and close; and

the end units **A** include a vertical element **8** on one side thereof, wherein the post attachment means **6,7** comprise a pair of post rings disposed at the top and bottom of the vertical element, and further wherein the end unit further includes a stake pin **14** disposed on the side opposite the vertical element, the stake pin being adapted to being inserted into the ground so as to anchor the end unit in position (Figures 1-4).

Ravert discloses a system comprising a footing adapted to be fastened to the ground, and a post being adapted to be retained by the footing instead of a wedge-shaped stake including a stake sleeve comprising a cylindrical cavity within the stake; and a post being adapted to be slidably inserted within and retained by the stake sleeve by means of frictional contact therebetween.

Carlson teaches a fencing a system a footing **6** adapted to be fastened to the ground, and a post **1** being adapted to be retained by the footing, or a wedge-shaped stake **5** including a stake sleeve comprising a cylindrical cavity; and the post being adapted to be slidably inserted within and retained by the stake sleeve by means of

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frictional contact therebetween (Figures 2 and 3, page 1 lines 49-54). Inasmuch as the references disclose footing and stakes as art recognized equivalents, it would have been obvious to one of ordinary skill in the exercise art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).

11. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravert in view of Carlson as applied to claim 1 above, and further in view of Gibbs et al.

As to claims 11 and 13, Ravert in view of Carlson fails to disclose a system wherein the structural components and the posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish.

Gibbs et al. teach a fencing system wherein structural components and posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish; the steel material providing for a strong, durable fence element, and the powder coated finish providing for enhanced corrosion resistance (column 2 lines 22-34). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a system as disclosed by Ravert in view of Carlson to have components manufactured from powder coated tubular steel as taught by Gibbs et al. in order to provide for a strong, durable fence element having enhanced corrosion resistance.

As to claim 12, Ravert discloses a system wherein the structural components are welded in assembly.

As to claim 14, Carlson teaches a system wherein the structural components, posts **1** and stakes **5** are removably attached to each other by frictional contact therebetween (Figure 2).

As to claim 15, Carlson teaches a system wherein a stake **5** is wedge-shaped, and a stake sleeve comprises a cylindrical cavity therein (Figure 2).

12. Claims 1-4, 7-10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friend (US 2,074,688) in view of Carlson.

As to claim 1, Friend discloses a decorative fencing system comprising:
a stake post **26** adapted to be driven into the ground; and
a structural component including a post attachment means disposed on an edge thereof, the post attachment means being adapted to be slidably attached to and engaged by the stake post (Figure 1).

Friend fails to disclose a system comprising a stake including a stake sleeve; and a separate post, the post being adapted to be slidably inserted within and retained by the stake sleeve.

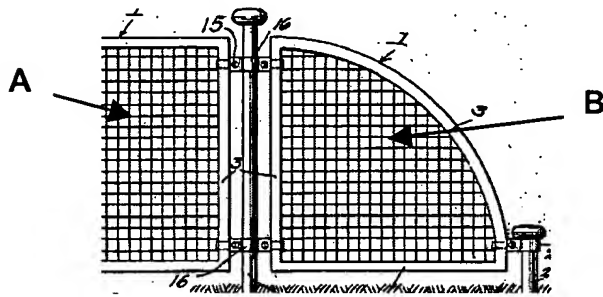
Carlson teaches a fencing system comprising a stake **5** including a stake sleeve; and a separate post **1**, the post being adapted to be slidably inserted within and retained by the stake sleeve; the separate stake and post enabling the post to be interchangeably used with a stake or a footing, providing for a more cost-efficient, multi-functional post. (Figure 2, page 1 lines 49-54). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a system as disclosed by Friend to have a separate stake and post as taught by Carlson

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in order to enable the post to be interchangeably used with a stake or a footing, providing for a more cost-efficient, multi-functional post.

As to claim 2, Friend discloses a system wherein the structural component is selected from the group consisting of base units, gate units and end units (Figure 1).

As to claim 3, Friend discloses a system wherein the base units **A** (Figure 1 reprinted below with annotations) include a vertical element **3** on either side thereof, and wherein the post attachment means **15** are disposed on the vertical elements (Figure 1).



As to claim 4, Friend discloses a system wherein the post attachment means **15** comprise a pair of post rings disposed at the top and bottom of both of the vertical elements **3** (Figure 1).

As to claim 7, Friend discloses a system wherein the end units **B** include a vertical element **3** on one side thereof and wherein the post attachment means **15** are disposed on the vertical elements (Figure 1).

As to claim 8, Friend discloses a system wherein the post attachment means **15** comprise a pair of post rings disposed on the top and bottom the vertical element **3** (Figure 1).

As to claim 9, Friend discloses a system wherein the end unit **B** includes a stake pin **25** disposed on the side opposite the vertical element **3**, the stake pin being adapted to being inserted into the ground so as to anchor the end unit in position (Figure 1).

As to claim 10, Friend discloses a system wherein the posts **26** and the structural components include decorative accents (Figure 1).

As to claims 16, Friend discloses a decorative fencing system comprising:
a wedge-shaped stake post **26** adapted to be driven into the ground; and
a structural component including a post attachment means **15** disposed on an edge thereof, the post attachment means being adapted to be slidably attached to and engaged by the post, the structural component being chosen from the group consisting of base units, gate units and end units, wherein:

the base units **A** include a vertical element **3** on either side thereof, and wherein the post attachment means comprises pair of post rings disposed at the top and bottom of both of the vertical elements;

the gate units comprise a pair of complementary doors each having an outside edge, wherein the outside edges terminate in a vertical element and wherein the post attachment means comprise a pair of post hinges disposed at the top and bottom of the vertical elements, the post hinges including a post ring and a hinge element to allow the complementary doors to open and close; and

the end units **B** include a vertical element **3** on one side thereof, wherein the post attachment means comprise a pair of post rings disposed at the top and bottom of the vertical element, and further wherein the end unit further includes a stake pin **25**

disposed on the side opposite the vertical element, the stake pin being adapted to being inserted into the ground so as to anchor the end unit in position (Figure 1).

Friend fails to disclose a system comprising a stake including a stake sleeve comprising a cylindrical cavity within the stake; and a separate post, the post being adapted to be slidably inserted within and retained by the stake sleeve by means of frictional contact therebetween.

Carlson teaches a fencing system comprising a stake 5 including a stake sleeve; and a separate post 1, the post being adapted to be slidably inserted within and retained by the stake sleeve by means of frictional contact therebetween; the separate stake and post enabling the post to be interchangeably used with a stake or a footing, providing for a more cost-efficient, multi-functional post. (Figure 2, page 1 lines 49-54). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a system as disclosed by Friend to have a separate stake and post as taught by Carlson in order to enable the post to be interchangeably used with a stake or a footing, providing for a more cost-efficient, multi-functional post.

13. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable Friend in view of Carlson as applied to claim 1 above, and further in view of Gibbs et al.

As to claims 11 and 13, Friend in view of Carlson fails to disclose a system wherein the structural components and the posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish.

Gibbs et al. teach a fencing system wherein structural components and posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish; the steel material providing for a strong, durable fence element, and the powder coated finish providing for enhanced corrosion resistance (column 2 lines 22-34). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a system as disclosed by Friend in view of Carlson to have components manufactured from powder coated tubular steel as taught by Gibbs et al. in order to provide for a strong, durable fence element having enhanced corrosion resistance.

As to claim 12, Friend discloses a system wherein the structural components are welded in assembly.

As to claim 14, Carlson teaches a system wherein the structural components, posts **1** and stakes **5** are removably attached to each other by frictional contact therebetween (Figure 2).

As to claim 15, Carlson teaches a system wherein a stake **5** is wedge-shaped, and a stake sleeve comprises a cylindrical cavity therein (Figure 2).

Conclusion

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patents show the state of the art with respect to fencing systems:

Bartlett (US 2,581,318), Campbell (US 2,622,848) and Rowan (US 3,484,081) are cited for pertaining to fencing systems comprising stakes.

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Sharp (US 5,301,926) is cited for pertaining to fencing systems manufactured from powder coated steel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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